analogous, the courts came to a contrary conclusion, while it was said in others that the representations might be so palpably untrue that no one would be justified in relying upon them. R. F. M.

LACK OF JURISDICTION TO PROCEED WITH A SUIT AGAINST A FOREIGN SOVEREIGN.—The case of *Mason* v. *The Intercolonial Ry. of Canada* (1907), — Mass. —, 83 N. E. Rep. 876, illustrates one of the weaknesses of public ownership of railroads. Plaintiff, being injured in Canada, brought suit by trustee process, substantially a proceeding in rem in Massachusetts. The defendant neglecting to answer, it was disclosed by a friend appointed by the court that the title to defendant road was in the King of England in his right as ruler of Canada, without any intermediary corporation. It was also shown that the road was maintained by appropriations from the general government fund, being directly under the supervision of the Minister of Finance, and that all of its earnings were used to meet purely governmental expenditure. The court thereupon refused jurisdiction on the theory that a sovereign cannot be impleaded in a foreign court without his consent.

The status of the Intercolonial Ry. and its relation to the Dominion government was clearly stated in the case of *Queen, Appellant* v. *McLeod* (8 Canadian Supreme Court 1). The train upon which the plaintiff was riding was thrown from a sharp curve. The evidence showed that for a mile on each side of the curve many of the ties could be kicked to pieces with a boot and that spikes could be picked from the rotten wood with the fingers. A verdict of $36,000 was reversed on the ground that a sovereign could not be sued in the courts of his own country. The decision was undoubtedly in line with the weight of authority. Theoretically and historically the power of the courts is derived from the King, and until something can be created out of nothing there is logic at least in saying that the creator cannot be called to account by the created. (BL. COM. I, p. 242). But the immunity granted a sovereign in the courts of a foreign jurisdiction rests upon other grounds. The absolute authority of the sovereign country over its own territory is admitted, the refusal to implead the foreign sovereign being founded rather on the courtesy of nations, and the practical inability of the court to enforce its decree; the whole situation being graphically stated by Blackstone in the query "Who shall command a King?" (BL. COM. Supra), *The Duke of Brunswick* v. *The King of Hanover*. 6 Beav. 1

The latter reason underlying the international rule finds no application where the proceeding as in the principal case is in the nature of a suit in rem. The very property, the only essential of jurisdiction, is before the court, leaving the only reason for refusal to decree right as to the property, the character of one of the parties.

Under such conditions, and bearing in mind that the exemption in its first instance depends purely upon comity, it is reasonable to expect a modification in the scope of the immunity. "There is," says Chief Justice MARSHALL in the leading case of *The Schooner Exchange* "a manifest distinction between the private property of the person who happens to be a

prince, and that military force which supports the sovereign power and maintains the dignity and independence of the nation." [7 Cranch. (U. S.) 116]. All of the cases to be cited on this point are at great pains to show that the property held exempt in the particular case before the court was devoted to a public purpose, and most of them intimate that the conclusion would have been different if property devoted by the sovereign to a private purpose had been involved, a principle thoroughly established in connection with the liability of a municipality for its torts.

While there are no cases defining the scope of private property within the rule it has been held that a French man-of-war was public property and could not be libelled even by her former American owners in an American port. *The Schooner Exchange* (supra). So a lightship to be moored in the Potomac River could not be attached for material furnished the contractor in her construction after the United States had been given possession. *Briggs* v. *Lightship,* 11 Allen 157. Likewise transports carrying provisions to a government military post, and money in England appropriated to pay the interest on the Spanish debt have been declared property so exclusively devoted to a public purpose that the court could not proceed against it in rem. *The Swift,* 1 Dod. 320; *Wadsworth* v. *Queen of Spain,* 17 Q. B. 171. And in a comparatively recent and elaborately argued opinion it was held in England that a mail packet owned and operated by the Belgium government could not be attached though she also transported persons and merchandise for hire. *The Parlement Belge,* L. R. 5 Prob. Div. 197. The tendency has undoubtedly been to broaden the public functions of government, so much so that Judge GRAY in *Briggs* v. *Lightship* doubts if any property may be held by a republican government except for public purposes, and the latest English case (*The Parlement Belge*) holds that the character of the property owned by a foreign state, i. e. whether public or private, is conclusively determined by the declaration of the foreign state, since to hold otherwise would compel the foreign sovereign to submit in the first instance to the court's determination, to avoid which the International rule was established. The Canadian Supreme Court in *Queen* v. *McLeod* (supra) had held that the Intercolonial Ry. was a "branch of the police power" and in no wise "a private mercantile speculation." Whether one follows the dicta of Judge GRAY in *Briggs* v. *Lightship,* a decision binding on the Massachusetts court that property owned by republics is presumed to be devoted to a public purpose, or that of the English court that the declaration of the foreign government is final, the result is the same; the property of the Intercolonial Ry. is devoted to a public use and exempt in a foreign court from proceedings in rem.

The case therefore emphasizes an inconvenience in public ownership. The injured party has no redress in the courts of his own country unless permission is first given him by the injuring party. And though a generous legislature provides a statutory action as comprehensive as that existing at common law, nevertheless the plaintiff has no standing in a foreign court unless that too is given by the enabling statute or the voluntary waiver by the injuring sovereign. F. B. K.